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Are You A Client? or A Customer?

	Exclusive Client	Non-Exclusive Self-Represented Customer
Regulatory (REBBA/TRESA)		
Obligations	Yes	Yes
<ul style="list-style-type: none"> - Disclosure of representation - Agency relationships and forms - To deliver agreements, offers and Statements - To account - Renumeration provisions - Not to induce, breach or make certain promises 		
Fiduciary (Legal) Obligations	Yes	No
<ul style="list-style-type: none"> - Not misusing confidential information - Maintaining utmost loyalty - Avoiding conflicts of interest - Disclosing conflicts - Disclosing financial benefits (Not making secret profit) 		
General Obligations	Yes	No
<ul style="list-style-type: none"> - Performing mandate - Obeying lawful instructions - Acting in person - Negotiating favourable terms - Maintaining confidentiality 		
Ensure Honesty	Yes	Yes
Disclose Information	FULL	Material Facts Only
Duty of Care	Skilled and Conscientious	Competent

Definitions on the following pages....

Definitions:

Disclosure of Representation:

The Code of Ethics requires that a brokerage and its representative provide certain information to potential clients and consumers as early as possible, and before entering into a representation agreement.

This information includes:

- The type of service alternatives available under the circumstances
- The services provided by the brokerage under the agreement
- Multiple representation restrictions, obligations and considerations.

By disclosing this information with respect to representation, registrants help ensure that consumers are informed about the roles and range of services that brokerages and salespersons will perform in real estate transactions.

The disclosure requirement also addresses the possibility of multiple representation and the consequent implications for the buyer or seller clients.

In addition, the brokerage and its representatives must use their best efforts to obtain a written acknowledgement from the consumer that this information has been received and understood.

Agency Relationships and Forms:

The Code of Ethics establishes certain requirements regarding buyer and seller representation agreements. For example, it requires that the agreement specifies clearly, comprehensibly and prominently the date when the agreement takes effect, the date on which it expires, the method for determining the remuneration amount payable, and how this amount will be paid to the brokerage.

To Deliver Agreements, Offers and Statements:

Legislation requires the prompt delivery of written agreements in connection with a trade in real estate. This provision of the Code of Ethics includes buyer and seller representation agreements, agreements of purchase and sale, deposits, as well as notices, amendments and other related documents.

Each party involved in the transaction receives a copy of the agreement and related documents; for example, if a husband and wife are the owners of a home being sold, they each must receive a copy.

To Account:

This obligation focuses on the regulatory responsibility of the brokerages and its salespersons to account for and safeguard money, documents and property entrusted to them as the agent. The obligation also entails strict record keeping practices which brokerages must adhere to.

Remuneration Provisions:

Under common law, brokerages are required to establish the existence of an agreement (in this case, a representation agreement) and confirm that the relevant event relating to the remuneration that took place.

There are legislation requirements and limitations about how remuneration is calculated or established, and regarding the rights to recover the funds.

For example, legislation allows for remuneration to be either an agreed amount, a percentage of the sale price, or a combination of both.

Not to Induce, Breach or Make Certain Promises:

Registrants are prohibited from inducing a consumer to break a contract for the purpose of entering into another agreement.

In addition, brokerages and their authorized representatives cannot make certain promises, such as reselling the consumer's property, buying a property directly from the client, or offering a commission rebate if the property is sold for a given amount, unless these promises are put in writing, explained in detail and understood by the person signing the agreement.

Also any promises must be signed by the brokerage and delivered to the party to whom the promise is made.

Not Misuse Confidential Information:

Brokerages and salespersons collect confidential information by the very nature of their client relationships. Needless to say, these relationships are established based on trust and loyalty.

Brokerages and salespersons must never use confidential information obtained from that relationship to their own advantage, nor to harm the client or unduly influence the negotiations with their endeavours.

Maintain Utmost Loyalty:

This obligation entails ensuring that the client's interests come first. The obligation to maintain utmost loyalty effectively encompasses all other fiduciary duties.

The client's interests take priority over those of the brokerage, the salesperson, or any other party. In a sense, any breach of loyalty, as the brokerage is not acting in the client's best interests.

Avoid Conflicts of Interest:

This obligation entails being aware of situations that may lead to conflicts of interest. Situations that may lead to conflicts of interest occur when the brokerage or its salespersons:

- Act for two clients at the same time in multiple representation, without proper consent.
- Are involved in the transaction (directly or indirectly) in a way that creates a potential or actual conflict of interest (for example, selling a client's property for themselves, a family member or a close friend).

Disclose Conflicts:

This fiduciary duty requires that brokerages and salespersons disclose any personal or third-party interests which conflict or might conflict with the interests of the client.

In order for brokerages and salespersons to avoid potential liability for breach of their fiduciary obligations, the client must have full knowledge of the exact nature and extent of the conflicts. Legislative provisions set out in REBBA and its associated regulations require a signed document attesting to the client's awareness and consent to the identified conflict.

Disclosure Financial Benefits:

This obligation prohibits brokerages and salespersons from profiting unlawfully at the expense of the client:

- Giving improper advice or breaching loyalty
 - This happens when a brokerage, or its salespersons, attempts to profit from the client's trust and reliance on their service. The gist of this breach is trying to give advice to further personal interests to the detriment of the client. For example a salesperson minimizes the wisdom of obtaining a home inspection for a property with visible issues in order to close the transaction quickly.
- Receiving payment from a party to the transaction
 - This occurs when real estate brokerages or salespersons accept remuneration from another party to the transaction without fully disclosing it to the client. The breach includes failing to disclose the amount being received and failing to obtain the client's consent to the payment. For example a salesperson finds an unrepresented seller who is offering a suitable property for his buyer clients. The salesperson signs the seller as a client and tries to collect remuneration from them. However, the seller does not know that the salesperson is also being compensated by the buyer.
- Receiving payment from a third party
 - When a brokerage or its representatives received a secret profit from someone who is providing services relating to the transaction. For example if the salesperson receives a secret payment of \$350 from a home inspector, an appraiser or a mortgage broker, a moving company, a renovation contractor or

agent for referring a specific client in a given transaction. Such profit must be openly disclosed to the client, regardless of the amount or type of compensation.

Perform Mandate:

Salespersons must perform the mandate and act in accordance with specific terms and authorities set out in the agreement between parties. While salespersons are not legally obligated to act outside the specific terms set out in the agreement, non-performance of services that form an industry standard may give rise to legal action.

Obey Lawful Instructions:

Salespersons are obligated to obey the instructions of the client. However, this obligation only extends to lawful instructions. As an example, brokerages and salespersons do not have an obligation to follow instructions that entail creating a false document for a buyer client seeking mortgage financing, obeying a seller client demanding misleading advertising content relating to their property, or a client instructing the brokerage to breach human rights legislation.

Personal Service (Act in Person):

Salespersons must perform duties personally unless instructed otherwise. Seller representation agreements commonly extend authority to salespersons authorized to trade for the brokerage. This authority can be implied.

Negotiating Favourable Terms:

Brokerage and salespersons must diligently advance their client's interests by assisting in negotiations and drafting favourable terms and conditions for agreements arising from the negotiations. Therefore, brokerages and salespersons must possess the necessary knowledge and skill to successfully negotiate agreements and also ensure that legally binding agreements are drafted on behalf of its clients.

Maintain Confidentiality:

Trust is the foundation of the registrant-client relationship. For this reason, brokerages and salespersons must maintain confidentiality in all matters that could negatively impact the client or in any way undermine their position during negotiations. Registrants must keep all client information confidential, whether the information was received directly from the client as a result of representing them.

Ensure Honesty:

Salespersons must demonstrate honesty of intent and ensure adherence to facts. Honesty extends to all dealings. Salespersons must ensure that the client, or unrepresented consumer, is

not in any way misled and that all known facts are disclosed, including the role of the brokerage and salespersons in performing services. This general obligation of honesty also extends to unrepresented customers.

Disclose Information:

Salespersons have a duty to disclose to their client information grouped under two categories:

- Information pertinent to the client relationship; namely, the existence of actual or potential conflicts; and
- Matters relating to the transaction which impact the client; in other words, situations or events involving the property, the offer, or third parties.

The first category relates to fiduciary obligations, while the second is viewed legally as a general obligation applying to all agent-principal (or salesperson-client) relationships. Both duties assume that registrants will disclose this information before the client makes a decision or takes action affecting their interest.

A material fact (a supportable fact) in real estate is information that, if known, might cause a buyer to make a different decision about remaining in a purchase contract, or to the price paid or received for property. It must detract from the value of the property or pose a danger to occupants. As an example, an salesperson who showed a property in the past that had water damage at the time should disclose this information to potential buyers, even if the damage isn't visible years later. Examples of material facts include: property condition and repair issues, murder or death in the home, haunted houses, problems from animals or pests or premises being used for the manufacture of illegal substances.

Exercise Care and Skill:

Duty of Care is an obligation that requires salespersons and brokerages to adhere to a standard of reasonable care while representing clients in a real estate transaction. Salespersons must possess the necessary skills and knowledge to perform services on behalf of the client, or an unrepresented consumer (with whom there is an agreement to provide services), at a level of competence expected of any prudent, reasonable person in the profession.

Salespersons must also ensure the completeness and accuracy of all information provided and recommend relevant experts, where applicable, to ensure that clients are well informed. The obligation to exercise care and skill also extends to anyone who is not represented by the brokerage.